

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Cung Le, Nathan Quarry, Jon
Fitch, Brandon Vera, Luis
Javier Vazquez, and Kyle
Kingsbury on behalf of
themselves and all others
similarly situated,

Case No.:

2:15-cv-01045-RFB-BNW

Plaintiffs,

v.

Zuffa, LLC, d/b/a Ultimate
Fighting Championship and
UFC,

Defendant.

TRANSCRIPT OF HEARING BEFORE
THE HONORABLE RICHARD FRANKLIN BOULWARE, II
September 23, 2019
9:33 a.m. - 12:13 p.m.
Richmond, Virginia

<p style="text-align: right;">Page 38</p> <p>1 Q And after the acquisition of Strikeforce, 2 the UFC obtained some or all of these fighters that 3 I just mentioned, correct? 4 A Correct. 5 Q Let's look at the next division. And here 6 we have light heavyweights consensus rankings 7 during this period, and we can see the top 25; is 8 that right? 9 A Yes. 10 Q And Strikeforce had 10, 11, 13, and 14 and 11 19. And after the Strikeforce acquisition, I 12 believe the UFC acquired all but Dan Henderson; is 13 that right? 14 A I believe so. 15 Q And eventually UFC got Dan Henderson; is 16 that right? 17 A Yes. 18 Q Okay. 19 A Which Dan Henderson fought for UFC before 20 that. 21 Q Right. Okay. 22 And in this e-mail, as you explained to me 23 at your deposition, you were showing your managers, 24 your bosses, Dana White and Lorenzo, how successful 25 you and Sean Shelby had been at signing the top MMA</p>	<p style="text-align: right;">Page 40</p> <p>1 THE COURT: Overruled. I'll allow it. 2 He seems to be fairly knowledgeable in this 3 area. 4 So, Mr. Silva, you understand what 5 these tiers were, right? 6 THE WITNESS: Correct. I did not 7 create this document, but -- 8 THE COURT: But you understood what the 9 tiers were that were referenced in the 10 document, I assume? 11 THE WITNESS: Yes. 12 THE COURT: Okay. And what are they? 13 THE WITNESS: Well, what you saw them 14 at is the minimum if -- amount that we pay the 15 smallest contract. 16 THE COURT: So Tier 1 would be the 17 minimum amount? 18 THE WITNESS: Correct. 19 THE COURT: And Tier 2 would be what? 20 THE WITNESS: It's anything over that, 21 as it progresses up. But I don't understand 22 how they got to anything above that because it 23 could vary then greatly depending on how well 24 you did. 25 THE COURT: Well, I'm sorry. Are you</p>
<p style="text-align: right;">Page 39</p> <p>1 talent and the majority of the top fighters in all 2 of the divisions you identified, right? 3 A Correct. 4 Q And just to summarize this, you would agree 5 with me that after the Strikeforce acquisition, the 6 UFC's share of the top 25 fighters in all of these 7 weight classes listed went up, higher than it was 8 in February of 2011, correct? 9 A Correct. 10 Q All right. You can put that document aside. 11 All right. Let me turn back to where I was and ask 12 you about -- oh, put up the minimum document. 13 His Honor had a question about the number of 14 fighters being paid at the lower level. I just 15 want to draw your attention to this aspect of the 16 document. 17 The assumptions of the document was that 18 under Tier 1, which is the first tier of percentage 19 of bouts at show, pay tiers, Tier 1 has less than 20 17,000. So am I correct that this -- 21 MS. GRIGSBY: Well, I'm just going to 22 object, because he hasn't laid a foundation 23 with this witness that he's knowledgeable. I 24 mean, the witness just testified he didn't 25 know. There's no --</p>	<p style="text-align: right;">Page 41</p> <p>1 saying you didn't -- when they created the 2 document, you didn't understand what these 3 tiers were? 4 THE WITNESS: Correct. I disagreed in 5 general with a lot Danny's projections. I did 6 not understand how they got to them. 7 THE COURT: Well, it looks like they're 8 showing actual difference -- 9 THE WITNESS: Right. But after a first 10 contract is over -- 11 THE COURT: Right. 12 THE WITNESS: -- you might negotiate, 13 as has happened after the second fight of a 14 fighter's contract, and that throws that off. 15 Or you might let them fight their contract 16 out, and that would affect where it goes. 17 I think they're trying to come up with 18 an average, where they're trying to figure it 19 out. But there was no lockstep way of, if 20 this is what the first contract was, this is 21 what the second contract is. 22 BY MR. CRAMER: 23 Q Right. You're saying that pay of UFC 24 fighters reflected their popularity and performance 25 as they went forward, correct?</p>

Page 42	Page 44
<p>1 A Correct. And it could vary greatly.</p> <p>2 Q Right. But you tried to pay fighters in</p> <p>3 accord with what you believed they were bringing to</p> <p>4 the table in terms of their performance, how you</p> <p>5 expected them to perform, and how popular they were</p> <p>6 with the fans, correct?</p> <p>7 A Well, there's a lot more things that go into</p> <p>8 it.</p> <p>9 THE COURT: Well, what else would go</p> <p>10 into -- I mean, other than looking at their</p> <p>11 popularity, their rank, and their ability to</p> <p>12 draw fans, what else would you look at besides</p> <p>13 that?</p> <p>14 THE WITNESS: Well, a huge thing that</p> <p>15 would affect me is -- which was out of my</p> <p>16 control, but they would bring to me, is they</p> <p>17 would go, hey, two months from now we're going</p> <p>18 to do a show in Poland. And I don't have any</p> <p>19 Polish fighters. There was nobody in Poland</p> <p>20 who particularly interested me, but I'd have</p> <p>21 to go out now and go find some. And is it</p> <p>22 going to now put a new premium on Polish</p> <p>23 fighters. This isn't I can take it or leave</p> <p>24 it. It's like I have to find Polish fighters,</p> <p>25 and whatever it cost me to get those fighters,</p>	<p>1 that's not necessarily the question I'm</p> <p>2 asking. I'm trying to figure out the</p> <p>3 percentages here. And there may have been --</p> <p>4 THE WITNESS: Right.</p> <p>5 THE COURT: -- shows here. So would</p> <p>6 you say that three-fourths of the fights for</p> <p>7 the UFC were in the United States?</p> <p>8 THE WITNESS: Probably.</p> <p>9 THE COURT: Okay. And so I'm not</p> <p>10 saying you didn't have some fights, I'm trying</p> <p>11 just to get some sense of the numbers.</p> <p>12 THE WITNESS: Right.</p> <p>13 THE COURT: And so -- because in the</p> <p>14 last few slides, it looked like UFC had</p> <p>15 control over most of the fighters at this time</p> <p>16 in certain weight classes, and so that's why</p> <p>17 when you say you had to go outside to get</p> <p>18 fighters for certain international fights, I</p> <p>19 want to just get a sense of how often that</p> <p>20 happened.</p> <p>21 THE WITNESS: Quite often, because if</p> <p>22 he had told me we were going to have one show</p> <p>23 in Korea, they're not only going to fight in</p> <p>24 Korea, they will fight in those other shows</p> <p>25 that are in the United States. I owe them</p>
Page 43	Page 45
<p>1 I now have to do because they've told me we're</p> <p>2 doing a show in Poland.</p> <p>3 THE COURT: Well, I understand that.</p> <p>4 But my understanding is that most of the</p> <p>5 fighters for the UFC at this time were in the</p> <p>6 United States; is that right?</p> <p>7 THE WITNESS: No. We did a lot of</p> <p>8 international shows.</p> <p>9 THE COURT: When you say "a lot,"</p> <p>10 Mr. Silva, you have to be very specific.</p> <p>11 THE WITNESS: Right. But even if they</p> <p>12 said -- if they said we're going to do one</p> <p>13 show --</p> <p>14 THE COURT: Let me help you. So what</p> <p>15 percentage of the fights the UFC put on around</p> <p>16 this time, 2011, were in the United States?</p> <p>17 THE WITNESS: I don't know</p> <p>18 percentage-wise, but I can --</p> <p>19 THE COURT: Well, was it more than</p> <p>20 half?</p> <p>21 THE WITNESS: Yeah, I'd say more than</p> <p>22 half. But if they told me we had one show in</p> <p>23 Korea --</p> <p>24 THE COURT: Well, I understand that.</p> <p>25 So I appreciate what you're talking about, but</p>	<p>1 more than one fight when we do multi-fight</p> <p>2 deals.</p> <p>3 But simply knowing -- if they tell me,</p> <p>4 hey, this year we're going to do a show in</p> <p>5 Korea, a show in Japan, multiple shows in</p> <p>6 Brazil, shows in Europe, I have to get talent</p> <p>7 for all of those. And then I will have to get</p> <p>8 them fights, three fights a year, average.</p> <p>9 So they'll fight besides just in Korea</p> <p>10 or Japan or wherever they're from. I</p> <p>11 definitely have to have them for that one</p> <p>12 show. But to get their other fights, they</p> <p>13 will then fight in other shows that I have.</p> <p>14 THE COURT: So going back to the issue</p> <p>15 of them and how you would assign or pay the</p> <p>16 fighters, other than these international</p> <p>17 fights where you may have to find someone for</p> <p>18 that local area, other than the rank and the</p> <p>19 popularity of the fight, what else would you</p> <p>20 look at?</p> <p>21 THE WITNESS: Well, just like it</p> <p>22 wouldn't have to be a country too. It could</p> <p>23 be a city. If we were going to a big city and</p> <p>24 they're like, do you have anybody local,</p> <p>25 somebody for PR that would be good for us for</p>

<p style="text-align: right;">Page 46</p> <p>1 that city. And I'd have to try and find that</p> <p>2 person and pay what it would take to get him.</p> <p>3 If you had somebody -- say there's a</p> <p>4 local promotion and this guy is the local</p> <p>5 hero, like it would be good to pick him up for</p> <p>6 this show because we're doing it in this show,</p> <p>7 then we'll get local PR and sell local</p> <p>8 tickets.</p> <p>9 THE COURT: Right. I understand that.</p> <p>10 But I'm saying it seems to me, at least from</p> <p>11 what I've heard about the business, there are</p> <p>12 a fair number of fighters who are known</p> <p>13 nationally, that if you didn't -- because of</p> <p>14 their popularity, you wouldn't have to find a</p> <p>15 particular heavyweight or other fighter who is</p> <p>16 just on a particular city, I'm saying in Las</p> <p>17 Vegas or New York, because they were known</p> <p>18 nationally.</p> <p>19 And so other than the idea of</p> <p>20 potentially scouting local talent, what else</p> <p>21 did you look at to determine a contract for a</p> <p>22 fighter?</p> <p>23 THE WITNESS: Well, his level of</p> <p>24 competition. So we had some -- what kind of</p> <p>25 swelled the ranks, as I said, were these</p>	<p style="text-align: right;">Page 48</p> <p>1 THE WITNESS: I think that has a lot to</p> <p>2 do with it. If you did not have the amount of</p> <p>3 injuries that we have, I think those numbers</p> <p>4 would be vastly different.</p> <p>5 THE COURT: But then it looks like, if</p> <p>6 you look at these numbers, 83 percent of these</p> <p>7 fighters are in Tier 1 or Tier 2, right? Less</p> <p>8 than 30,000; is that right?</p> <p>9 THE WITNESS: Correct.</p> <p>10 THE COURT: And is part of that due to</p> <p>11 what you're talking about, which is obtaining</p> <p>12 these individual fighters?</p> <p>13 THE WITNESS: Yeah, I would say -- just</p> <p>14 say on average if we had to sign three guys as</p> <p>15 injury replacements per show, and we do 44</p> <p>16 shows a year, that's a lot of fighters being</p> <p>17 added.</p> <p>18 THE COURT: And it looks like many of</p> <p>19 them, kind of the majority of them, would come</p> <p>20 in under the standard first contract, minimum</p> <p>21 contract?</p> <p>22 THE WITNESS: Right. As I said, they</p> <p>23 are guys who I not necessarily -- like, this</p> <p>24 isn't a guy I really want; it's like, this is</p> <p>25 a guy I need because I owe this other guy a</p>
<p style="text-align: right;">Page 47</p> <p>1 last-second replacement fights, which we had a</p> <p>2 huge number of.</p> <p>3 This sport is very physically</p> <p>4 demanding. So in my entire career, I've done</p> <p>5 maybe one card where somebody didn't drop out</p> <p>6 injured. And I've had cards where more than</p> <p>7 half the scheduled fighters dropped out</p> <p>8 injured. So when that happens, I still owe</p> <p>9 their opponent a fight. So I would prefer to</p> <p>10 take somebody who is already under contract</p> <p>11 and have them step in and fight, but those</p> <p>12 fighters are like, why am I going to take that</p> <p>13 risk, I didn't have a full training camp to</p> <p>14 prepare for this, I already have a UFC</p> <p>15 contract, I'm good.</p> <p>16 So I have to usually get somebody from</p> <p>17 outside who is looking to get their first shot</p> <p>18 with the UFC. So those type of fighters quite</p> <p>19 often would be more that entry level. It's</p> <p>20 like this is not really somebody I wanted to</p> <p>21 sign, but I'm kind of being forced to to get</p> <p>22 this other guy his fight.</p> <p>23 THE COURT: So that's why it says</p> <p>24 66 percent of people in that first tier were</p> <p>25 --</p>	<p style="text-align: right;">Page 49</p> <p>1 fight.</p> <p>2 THE COURT: So in order to fill sort of</p> <p>3 gaps or holes in the ticket that would arise,</p> <p>4 you would bring in these fighters and sign</p> <p>5 them to these contracts?</p> <p>6 THE WITNESS: Yes, sir.</p> <p>7 THE COURT: All right. And then you're</p> <p>8 not finding them any more fights after the one</p> <p>9 fight you acquired them for; is that right?</p> <p>10 THE WITNESS: No. I did give them a</p> <p>11 standard contract. And it was my practice, I</p> <p>12 knew you were coming in short notice, so it's</p> <p>13 not the best circumstances, and it's a jump up</p> <p>14 in competition for you. So it was very rare</p> <p>15 that if you lost that fight that I would cut</p> <p>16 you. I was usually going to give you another</p> <p>17 opportunity.</p> <p>18 THE COURT: Okay. Thank you.</p> <p>19 BY MR. CRAMER:</p> <p>20 Q I want to go back to your statement that</p> <p>21 you -- when the UFC was putting on a show in</p> <p>22 Poland, you would look for a fighter popular in</p> <p>23 Poland, or if the UFC was putting on a show in</p> <p>24 Buffalo, you would look for a fighter popular in</p> <p>25 Buffalo.</p>

<p style="text-align: right;">Page 50</p> <p>1 I asked you whether the UFC looked to pay</p> <p>2 fighters based on their popularity and their</p> <p>3 performance. So the latter of three, popular in</p> <p>4 Poland or Buffalo, or Poland in popularity, you're</p> <p>5 looking for fighters who can generate interest with</p> <p>6 the audience, correct?</p> <p>7 A Yes.</p> <p>8 Q Yes.</p> <p>9 And when the UFC put on shows in Poland or</p> <p>10 Buffalo, those were typically broadcast into</p> <p>11 North America, correct?</p> <p>12 A Well, it would depend on -- like, where on</p> <p>13 the card they're at, though.</p> <p>14 Q But the show itself would be broadcast --</p> <p>15 the main part of the show would be broadcast into</p> <p>16 North America?</p> <p>17 A The main part, yes.</p> <p>18 Q Or be on Pay-Per-View?</p> <p>19 A Yes.</p> <p>20 Q Or both?</p> <p>21 A Correct.</p> <p>22 Q Okay. All right. Let me take you to</p> <p>23 Exhibit PCCX-391, it's a series of e-mails between</p> <p>24 you and Bas Boon between May 19, 2009, and</p> <p>25 January 29, 2011.</p>	<p style="text-align: right;">Page 52</p> <p>1 today.</p> <p>2 MR. CRAMER: Okay. Very good. Thank</p> <p>3 you, Your Honor.</p> <p>4 THE COURT: For both sides' documents,</p> <p>5 so whatever was offered previously.</p> <p>6 Go ahead, Mr. Cramer.</p> <p>7 MR. CRAMER: Thank you, Your Honor.</p> <p>8 BY MR. CRAMER:</p> <p>9 Q On page 3, there's this e-mail dated May 19,</p> <p>10 2009, where you discuss a potential offer to</p> <p>11 Einemo, and it was a four-fight contract, and you</p> <p>12 offered compensation starting at 15 and 15, and you</p> <p>13 proposed to increase that 2 and 2 for each win; is</p> <p>14 that right?</p> <p>15 A Yes.</p> <p>16 Q And it was a four-fight deal; is that right?</p> <p>17 A Yes.</p> <p>18 Q All right. Now let's go to page 2. At the</p> <p>19 bottom -- yeah, it carries over to page 3. Also on</p> <p>20 May 19, 2009, Boon sends you an e-mail in which he</p> <p>21 tries to negotiate higher compensation.</p> <p>22 And towards the bottom of page 2, you</p> <p>23 responded to Boon's efforts to get more money for</p> <p>24 his client, writing, quote -- where is the bottom</p> <p>25 of page 2? On the top of page 2. I'm sorry.</p>
<p style="text-align: right;">Page 51</p> <p>1 Before I ask you about the document in</p> <p>2 particular, Boon is a fighter representative; is</p> <p>3 that right?</p> <p>4 A Yes, sir.</p> <p>5 Q And in this series of e-mails, Boon was</p> <p>6 trying to get you to sign one of his fighters to</p> <p>7 the UFC, John Einemo; is that right?</p> <p>8 A Einemo.</p> <p>9 Q Einemo, E-I-N-E-M-O. Is that right?</p> <p>10 A Yes, sir.</p> <p>11 Q Okay. So turn to page 3 of this document,</p> <p>12 please.</p> <p>13 THE COURT: Now, have all of these</p> <p>14 exhibits been admitted? I want to make sure,</p> <p>15 because I know one of the things we have to</p> <p>16 make sure we do is confirm what's on the</p> <p>17 record as to whether it's been admitted or</p> <p>18 whether it needs to be admitted into the</p> <p>19 record here, Mr. Cramer.</p> <p>20 MR. CRAMER: Well, these have all been</p> <p>21 submitted. This is PCCX-391.</p> <p>22 THE COURT: Okay. And have I actually</p> <p>23 formally admitted all of those documents? I'm</p> <p>24 not sure that I have. We can make sure that</p> <p>25 we do that at the close of the proceeding</p>	<p style="text-align: right;">Page 53</p> <p>1 There you go.</p> <p>2 Top of page 2, Wednesday, May 20th, 2009,</p> <p>3 you responded to Boon's efforts to get his client</p> <p>4 more money. You say: "As I said, I have a pay</p> <p>5 structure. I cannot mess it up for one fighter. I</p> <p>6 have to justify that to all the other managers."</p> <p>7 You wrote that, correct?</p> <p>8 A Correct.</p> <p>9 Q All right. You can put that document aside.</p> <p>10 And I'd like to show you another document</p> <p>11 with a similar theme. It's PCCX-338, and it's an</p> <p>12 e-mail dated October 10, 2007, in which you were</p> <p>13 writing to someone named Ali Almeida --</p> <p>14 A Almeida.</p> <p>15 Q -- Almeida, A-L-M-E-I-D-A, regarding a</p> <p>16 fighter named Ricardo Almeida.</p> <p>17 And on page 2 you write -- page 2. And in</p> <p>18 the box there on October 10th you write to</p> <p>19 Mr. Almeida: "As I said, I have 200 fighters under</p> <p>20 contract, and our purses are public. I have to</p> <p>21 justify to all my other fighters what I pay out.</p> <p>22 There are people under contract to me now that are</p> <p>23 not making as much as I offered Ricardo, and they</p> <p>24 are better known to our fans and have more UFC</p> <p>25 fights than he does."</p>

Page 54

1 Do you recall writing that?
 2 A Yes.
 3 Q Okay. So one of the tools you used to
 4 negotiate with fighters was to try and place your
 5 offer that you're giving to the fighter in the
 6 context of what you believed were comparable
 7 fighters or even better fighters getting a similar
 8 or lesser deal; is that right?
 9 A Well, as it says here, I'm offering Ricardo
 10 more money than people who are now in the UFC,
 11 so --
 12 Q Right. So you're trying to justify the
 13 pay --
 14 A Correct.
 15 Q -- to this fighter by saying, hey, there are
 16 some other people who may even be better than you
 17 that are getting less?
 18 A Correct.
 19 Q So you're trying to convince the fighter
 20 that you're treating him fairly; is that right?
 21 A Yes. Whenever I've dealt with fighters, I
 22 have tried to be able to justify my offer.
 23 Q And one of the tools you used to negotiate
 24 with fighters was to place the offer in the context
 25 of these fighters, and you did that to try to,

Page 55

1 again, align the pay with expected performance and
 2 popularity of the fighter, correct?
 3 A Well, the potential.
 4 Q Right. Expected performance. Their
 5 potential popularity --
 6 A Unexpected is the possibility, because quite
 7 a few do not.
 8 Q Right. You don't know.
 9 A (Nods head up and down.)
 10 Q But what you're trying to do is align the
 11 pay of what you expect their performance and
 12 popularity to be?
 13 A Well, then I could -- when somebody else
 14 came to me and said, why did you give this to this
 15 guy, then I could verbalize, here are part of the
 16 reasons why, we're in Brazil and he's Brazilian,
 17 he's got this following, he's a Brazilian Jiu-Jitsu
 18 world champion, and that's something that factored
 19 into it. So I'd have to list all of the reasons
 20 why so that the dealers know you're just pulling
 21 numbers out arbitrarily.
 22 Q Right. You're trying to justify the pay
 23 based on objective facts, correct?
 24 A Correct.
 25 Q Correct?

Page 56

1 A Correct.
 2 Q All right. Now I'd like to turn to a
 3 document PCCX-255, and it's a series of e-mails
 4 between you and Sven Bean regarding a fighter known
 5 as Bang, B-A-N-G. And the top e-mail here is dated
 6 December 9, 2010.
 7 Do you recall this series of e-mails?
 8 A Yes, sir.
 9 Q Does Bang refer to Duane "Bang" Ludwig?
 10 A Yes.
 11 Q Okay. And I'd like to show you the first
 12 e-mail in the chain on page 3.
 13 A Yes.
 14 Q It's from you to Mr. Bean, who is
 15 representing Mr. Bang, or Bang, and you offer him a
 16 new four-fight deal before Bang's last fight in his
 17 prior contract.
 18 And you say: "He is on his last fight at 14
 19 and 14. I'll drop that and give him a new deal at
 20 16, 16; 18, 18; 20, 20; and 22, 22."
 21 Do you see that?
 22 A Yes.
 23 Q Okay. And that was the offer, correct?
 24 A Yes.
 25 Q And turn to Mr. Bean's response in the

Page 57

1 middle of page 2. On December 8th, he asked for
 2 2,000 more to win and show. Okay.
 3 "Can I please ask that if we go ahead and
 4 sign four more fights, we'd be able to start at 18,
 5 18?"
 6 So he wants a little bit more than you
 7 offered.
 8 And I'd like to show you your response,
 9 which is on the top of page 2.
 10 You tell him: "Everybody has it tough. I
 11 have to do what is fair for everyone. You make
 12 what you make based on performance and popularity."
 13 Do you see that?
 14 A Yes.
 15 Q And those were your words, correct?
 16 A Correct.
 17 Q And by "performance and popularity," you
 18 meant what we've been just talking about, that
 19 fighters are paid on your view and the UFC's view
 20 as to the expected fan interest and the fighter's
 21 expected performance when they fight, correct?
 22 A Right. Because the manager is trying to
 23 make an appeal to personal issues that he's having,
 24 and I'm letting him know I can't take personal
 25 issues into account, I'm basing it on your

<p style="text-align: right;">Page 58</p> <p>1 performance and your popularity. 2 Q Right. And in other words, if a fighter is 3 expected by you or the UFC to generate more fan 4 interest, you are willing to pay him more relative 5 to a fighter that you believe is expected to 6 generate less fan interest, correct? 7 A Correct. 8 Q Turn to page 1. And this is your last 9 e-mail to Mr. Bean, at the top of the document. 10 And you're pretty firm here. 11 You say to him: "I'm not trying to be a 12 dick, but no, everyone knows what everyone makes. 13 Our purses are public. I have to justify 14 everyone's pay to everyone else." 15 Do you see that? 16 A Yes. 17 Q And you said that, right? 18 A Correct. 19 Q And I'd like to show you -- I asked you 20 about this at your deposition, and I'd like to show 21 you your testimony about it at your deposition. 22 A Yes. 23 Q This is at 372 to 373 of your deposition. 24 I asked you: "And so you wanted to make 25 sure that you did your best to try to make sure</p>	<p style="text-align: right;">Page 60</p> <p>1 applied equally across the fighters. So in 2 other words, you would look at the popularity 3 and performance of the fighters the same; you 4 wouldn't favor one fighter or another in terms 5 of that evaluation, correct? 6 THE WITNESS: Correct. But instead, it 7 would just weigh differently for different 8 fighters. 9 THE COURT: Right. 10 THE WITNESS: That problem does not 11 apply to everyone. 12 THE COURT: No, I understand that. 13 What I'm saying is that in terms of that 14 assessment -- 15 THE WITNESS: Yes. 16 THE COURT: -- on performance and 17 popularity, you would try to apply that evenly 18 across the fighters, right? 19 THE WITNESS: Yes. 20 THE COURT: Right? 21 THE WITNESS: Yes. 22 THE COURT: Okay. 23 BY MR. CRAMER: 24 Q And I asked you on page 373, and I'll ask it 25 to you right now in the context of this back and</p>
<p style="text-align: right;">Page 59</p> <p>1 that comparable fighters with comparable" -- 2 THE COURT: So, Mr. Cramer, you don't 3 need to read the deposition. If you want to 4 ask him the question, then you can ask him the 5 question. If he doesn't answer it the way he 6 answered in the deposition, then you can just 7 then read in the deposition. 8 MR. CRAMER: Okay. Fine. I'm going to 9 ask the same question. 10 BY MR. CRAMER: 11 Q So with this back and forth that we just 12 looked at, you wanted to make sure that you did 13 your best to make sure that comparable fighters 14 with comparable records are getting paid comparable 15 amounts; is that fair? 16 A Right, but it's not just on records. 17 THE COURT: Okay. But you wanted to 18 have a -- Mr. Silva, you wanted to have a 19 comparable pay scale for fighters. You 20 wouldn't just have arbitrary numbers, right? 21 THE WITNESS: Correct. That I would 22 have different factors that I could verbalize 23 and say, yes, this is why. 24 THE COURT: Right. You want to be able 25 to explain it. But those factors would be</p>	<p style="text-align: right;">Page 61</p> <p>1 forth: "You attempted, at least in your mind, to 2 be fair, to impose a sense of equity between the 3 different fighters, correct?" 4 Is that right? That's what you were trying 5 to do, be fair to the fighters? 6 A Could you define "equity" for me? 7 Q Treating fighters based on the objective 8 factors that you were talking about. 9 THE COURT: I think, Mr. Cramer, he 10 just answered that question. That was the 11 question, I think, that I asked him. 12 MR. CRAMER: Okay. Thank you. 13 BY MR. CRAMER: 14 Q Let me just clarify. One way you conveyed 15 to managers and fighters that you were negotiating 16 with that you were dealing with them fairly was to 17 tell them honestly where their compensation fit 18 relative to other fighters at their level; is that 19 right? 20 A Yes. 21 Q Okay. And do you recall telling me that 22 fighters or their managers wanted to be treated 23 unfairly in their favor? 24 A Yes. I mean, a manager is doing his job; 25 he's doing everything in his power to get the most</p>

Page 62

1 that he can for his client.
 2 Q Right. And the way you dealt with a manager
 3 in that situation was to try to compare his or her
 4 fighter to other fighters that you believed were
 5 similar or better, and explain that the fighter
 6 with whom you were negotiating is being treated the
 7 same or better as compared to the other fighter; is
 8 that fair?

9 A That's fair.

10 Q And you believed that if you were to raise a
 11 fighter's pay above what a comparable or better
 12 fighter was being paid, either by accident or in
 13 response to a manager's inquiry, that could
 14 potentially cause you problems across the board
 15 with other fighters and managers; is that right?

16 A Correct.

17 Q Thank you.

18 And you told me at your deposition you
 19 wanted to be able to tell fighters that they were
 20 being treated fairly relative to other fighters
 21 with similar skills and records and popularity,
 22 correct?

23 A Right. And there's other factors too. As
 24 long as I could explain it, one thing is that you
 25 have certain fighters who -- as I said, people are

Page 63

1 very hesitant to take last-notice fights because
 2 it's a big risk, you haven't had a full training
 3 camp to prepare, but there are some fighters who
 4 have repeatedly done that. So their manager might
 5 come back and remind me -- because you're dealing
 6 with so many fighters, you might forget. So I go,
 7 hey, here is a new deal, I'll offer it. And the
 8 manager, if he's a good manager, he'll come to you
 9 and go, you know, this guy stepped up for you,
 10 three times he fought for you short notice, maybe
 11 he didn't win every time, but he's always been
 12 there for you. Don't you think that's worth more
 13 money?

14 And I'd look at him and go, yeah, you're
 15 right, he did, he did me a solid, let's give him
 16 more money. But if somebody then asks about that,
 17 then they go, wait, you're saying, you know,
 18 because I won this many fights, I'm getting this,
 19 why does that guy get that? And I can then say,
 20 this guy stepped up three times late notice; he had
 21 a reason outside of why I would pay him more than
 22 somebody else with a similar record or a similar
 23 popularity.

24 Q Fair enough. All right. Let me change
 25 topics a little bit.

Page 64

1 In order to fight within the UFC, Zuffa
 2 requires fighters to sign what Zuffa called the
 3 exclusive for both Promotional and Ancillary Rights
 4 Agreement, correct?

5 A Correct.

6 Q Okay. And at the time of your deposition,
 7 you were not aware of any fighter that Zuffa had
 8 allowed to compete in the UFC without signing one
 9 of those exclusive contracts; is that right?

10 A Correct.

11 Q And you're not aware of any fighter fighting
 12 in the UFC today that did not sign one of UFC's
 13 exclusive contracts?

14 A I'm not aware.

15 Q Okay. And it's fair to say that in your
 16 negotiations with fighters, you understood that
 17 this exclusive fighter agreement had certain
 18 standard provisions that Zuffa expected its
 19 fighters to sign and agree to, correct?

20 A Correct.

21 Q And it's fair to say that the end of a term
 22 of a standard UFC fighter's contract, the contract
 23 typically provided a 90-day exclusive negotiation
 24 period; is that right?

25 A Correct.

Page 65

1 Q And during that period, Zuffa was the only
 2 promotion that could bid on the services of that
 3 fighter, correct?

4 A Correct.

5 Q Okay. And following the exclusive
 6 negotiation period, Zuffa's standard contracts
 7 typically also had a right to match any offer that
 8 the fighter got from another promoter, correct?

9 A Correct.

10 Q And that right-to-match period typically
 11 lasted for one year; is that correct?

12 A Correct. But we would have to -- if
 13 somebody had an offer, we would have to deal with
 14 it immediately.

15 Q Right. So if somebody got an offer, you
 16 would have to deal with it, and you decided whether
 17 to respond. But if Zuffa did respond, then the
 18 negotiation was over, correct?

19 A Correct.

20 Q Okay. Between the 90-day exclusive
 21 negotiation period and the one-year right-to-match
 22 period, Zuffa had the ability to retain any fighter
 23 it wanted to keep after the term of the exclusive
 24 agreement for up to 15 months, provided Zuffa was
 25 willing to match an offer from another promotion,

<p style="text-align: right;">Page 82</p> <p>1 bonuses for fighters? In other words, it 2 wouldn't be one fighter get \$30,000 for that 3 same fight versus another fighter get \$50,000, 4 right? 5 THE WITNESS: It could be the first 6 fight of the night or the main event. It 7 would be the same. 8 THE COURT: But I mean in terms of for 9 the different fighters, fighters themselves, 10 you wouldn't have different bonus amounts -- 11 THE WITNESS: No. 12 THE COURT: -- for different fighters 13 for those types of bonuses, right? 14 THE WITNESS: It was the same for 15 everyone. 16 THE COURT: Okay. And were fighters 17 allowed to negotiate the bonuses, those types 18 of bonuses? 19 THE WITNESS: No. There was a -- it 20 did evolve. There was a time where a bonus 21 amount was different from show to show based 22 on how big the show was. But that caused a 23 problem, which I solved, where it was just 24 like, well, your people, maybe they're not the 25 highest ranked guy, but they're very exciting,</p>	<p style="text-align: right;">Page 84</p> <p>1 could have him on an exciting fight. But 2 there would be certain shows, like, hey, Joe, 3 I want you on the show, he's like, yeah, I'd 4 rather wait for the Pay-Per-View. I was 5 like -- you know, at first you're like, but 6 why, this is a good spot for you and it shows 7 you off. He's like, hey, man, I'm all about 8 the bonuses, you have that -- you're only 9 offering \$30,000 for a show this size, and I'd 10 rather wait to Pay-Per-View where it's 11 \$60,000. 12 THE COURT: Because the bonus for the 13 one event could be substantially higher, it 14 could in fact be more than they might get paid 15 for their -- whatever the win amount is, 16 right? 17 THE WITNESS: Correct. And multiple 18 times it even happened where you got two 19 bonuses, the person got the fight of the 20 night, so they got 50,000 for that, and they 21 got performance of the night because it was 22 the best fight and they had a spectacular 23 knockout in it, so they got an extra \$100,000 24 for that fight. 25 THE COURT: Okay. Thank you for</p>
<p style="text-align: right;">Page 83</p> <p>1 and they get bonuses, and he doesn't want to 2 go out and fight on this small show, because 3 lesser bonuses, and he's a bonus machine. So 4 to avoid people wanting to skip shows because 5 the bonuses are different, it's like let's 6 just make them all standard for all the shows. 7 THE COURT: And about when did you do 8 that? 9 THE WITNESS: I'm so bad with time 10 frames. 11 THE COURT: Before or after 12 Strikeforce? 13 THE WITNESS: Probably after, that it 14 became more uniform. 15 THE COURT: Right after that? 16 THE WITNESS: Not right after, but -- 17 THE COURT: But around that -- 18 THE WITNESS: I think it came about 19 simply because we were starting to notice that 20 this trend was happening with certain fighters 21 avoiding certain shows. 22 THE COURT: I see. 23 THE WITNESS: And it was based on the 24 bonuses. Like Joe Lauzon, he never fought for 25 a title, he was always an exciting guy, you</p>	<p style="text-align: right;">Page 85</p> <p>1 explaining that. 2 BY MS. GRIGSBY: 3 Q But just to touch upon it, there's more in 4 this spreadsheet than just bonuses; is that right? 5 A Correct. 6 Q So did some fighters negotiate, say, for 7 example, signing bonuses? 8 A Yes. 9 Q Did UFC have different negotiations 10 regarding incidentals for fighters? 11 A Yes, for some. 12 Q Can you just give an example of what the 13 difference might be in those negotiations? 14 A Well, standard, we would fly the fighter and 15 the cornerman to the show, they would share a 16 hotel, they would both get per diem. And there 17 would be certain fighters when they achieved a 18 higher stature, that they're like, look, I really 19 need two cornermen, and they need their own hotel 20 room. 21 You did have to be pickier about that simply 22 because we were only allotted so many hotel rooms 23 by the casino, but there would be some where there 24 would be some wiggle room for that. 25 Q And you also mentioned Pay-Per-View, that</p>

<p style="text-align: right;">Page 86</p> <p>1 some athletes negotiated shares of Pay-Per-View</p> <p>2 revenues; is that correct?</p> <p>3 A Correct. Some fighters would get a piece of</p> <p>4 the Pay-Per-View.</p> <p>5 Q So can you describe generally how did that</p> <p>6 work to negotiate a piece of the Pay-Per-View?</p> <p>7 A So if you've got -- if a fighter is to the</p> <p>8 stature of where that was a possibility, generally</p> <p>9 I would refer them to Dana or Lorenzo. But if they</p> <p>10 granted them that, say they were the champion, when</p> <p>11 they defended their title, they would get a</p> <p>12 percentage of Pay-Per-View over a certain base</p> <p>13 level.</p> <p>14 Q And when you negotiated Pay-Per-Views, did</p> <p>15 athletes ever ask you about Zuffa's actual or</p> <p>16 expected revenue for an event?</p> <p>17 A No.</p> <p>18 Q All right. So then I just want to go back</p> <p>19 to -- you mentioned that there was a minimum pay.</p> <p>20 And plaintiff showed you JCCX-8. Do you recall</p> <p>21 that?</p> <p>22 A Yes.</p> <p>23 Q Now, did you create that slide dec, JCCX-8?</p> <p>24 A I did not.</p> <p>25 Q And do you know --</p>	<p style="text-align: right;">Page 88</p> <p>1 to show it now. I just wanted to -- you to</p> <p>2 identify it for the record.</p> <p>3 BY MS. GRIGSBY:</p> <p>4 Q So for JCCX-8, did you create any of these</p> <p>5 slides?</p> <p>6 A No.</p> <p>7 Q And do you know -- let's turn to the</p> <p>8 assumptions. When it talks about greater than or</p> <p>9 equal to -- for Tier 2, greater than or equal to</p> <p>10 17K, less than 30K, do you know where those numbers</p> <p>11 are coming from?</p> <p>12 A I don't.</p> <p>13 Q Okay.</p> <p>14 THE COURT: And I'm sorry, who was the</p> <p>15 person who prepared this document?</p> <p>16 THE WITNESS: Denitza Batchvarova.</p> <p>17 THE COURT: And what was her role?</p> <p>18 THE WITNESS: She would do, like,</p> <p>19 financial projections and stuff for Zuffa.</p> <p>20 THE COURT: So she would have access to</p> <p>21 all the contracts and information in the</p> <p>22 contracts?</p> <p>23 THE WITNESS: Correct.</p> <p>24 THE COURT: Okay. So she would have</p> <p>25 known this information about what all the</p>
<p style="text-align: right;">Page 87</p> <p>1 THE COURT: So Ms. Grigsby --</p> <p>2 MS. GRIGSBY: Sure.</p> <p>3 THE COURT: -- just so we're clear, do</p> <p>4 you mind putting that up on the screen?</p> <p>5 MS. GRIGSBY: Oh, sure. I'm sorry.</p> <p>6 Would you put up --</p> <p>7 THE COURT: Is that the Moving the</p> <p>8 Minimums?</p> <p>9 MS. GRIGSBY: Correct. Yeah.</p> <p>10 THE COURT: Okay. I just wanted to</p> <p>11 make sure you're referencing and I'm</p> <p>12 referencing --</p> <p>13 MS. GRIGSBY: Yes.</p> <p>14 THE WITNESS: -- we're talking about</p> <p>15 the same --</p> <p>16 MS. GRIGSBY: Yes.</p> <p>17 THE COURT: So it's Moving the Minimums</p> <p>18 sheet that had the different scales as well as</p> <p>19 that tier column. Is that the one you're</p> <p>20 talking about?</p> <p>21 MS. GRIGSBY: Correct.</p> <p>22 THE COURT: And, Mr. Silva, that's what</p> <p>23 you understand to be the document?</p> <p>24 THE WITNESS: Yes.</p> <p>25 THE COURT: That's fine. We don't need</p>	<p style="text-align: right;">Page 89</p> <p>1 fighters were being paid, because she would</p> <p>2 have access to it as a financial person inside</p> <p>3 of Zuffa; is that correct?</p> <p>4 THE WITNESS: But she's trying to make</p> <p>5 projections on --</p> <p>6 THE COURT: Okay. But first answer</p> <p>7 that question. She would have had access to</p> <p>8 all the fighter contracts and their amounts?</p> <p>9 THE WITNESS: Yes.</p> <p>10 THE COURT: Okay. So she could create</p> <p>11 a chart based upon that information, correct?</p> <p>12 THE WITNESS: The information we had at</p> <p>13 the time, yes.</p> <p>14 THE COURT: Okay. I understand you're</p> <p>15 saying that you don't -- you may or may not</p> <p>16 have agreed with how it was put together, but</p> <p>17 she had access to that information, to include</p> <p>18 all of the contracts for all of the fighters</p> <p>19 for UFC at the time?</p> <p>20 THE WITNESS: Yes.</p> <p>21 THE COURT: Okay. Thank you.</p> <p>22 Go ahead.</p> <p>23 BY MS. GRIGSBY:</p> <p>24 Q But do you know how she put together this</p> <p>25 information? Do you actually know that she</p>

Page 90

1 consulted with all these contracts?

2 A I don't know.

3 Q Okay. So let's talk a little bit about the

4 minimum compensation, just to be clear.

5 You mentioned that untested fighters or new

6 fighters, some of them received \$10,000 as a start

7 for their first contract.

8 Would those same fighters receive a second

9 amount for their second contract with the UFC?

10 A If they --

11 Q Like a second starting point. Sorry.

12 So talking about not the first contract, but

13 the second contract.

14 A There was no set second contract.

15 Q So there was no minimum for the second

16 contract with the UFC; is that right?

17 A No.

18 Q Okay.

19 A The only minimum at that point was the 10

20 and 10 that was established.

21 Q And would you say athletes generally signing

22 their second contracts with the UFC received

23 similar amounts for show and win payments?

24 A I'm sorry, repeat that.

25 Q Would you say that athletes signing their

Page 91

1 second contracts with the UFC would always receive

2 similar amounts for their show and win payments in

3 their second?

4 A No.

5 Q Why not?

6 A Because it would depend -- well, if you

7 fought three fights, it would depend on what you

8 did in those three fights. It's very different if

9 you won all three fights, if you lost all three

10 fights, if you had a mix in between, if you won

11 those fights in an exciting fashion, the level of

12 competition that you were fighting in those three

13 fights would affect your next deal.

14 Q Okay. And were there instances where

15 fighters had, say, for example, losses, who might

16 receive more on those second contracts than

17 fighters who might have had a slightly better

18 record?

19 A Yes.

20 Q Can you give some examples?

21 A Off the top of my head, I'm not sure. There

22 are so many that -- to remember, had they that

23 early on in their career, if they lost and come up.

24 But we certainly had more popular people. There's

25 examples like Sage Northcutt, who was signed to a

Page 92

1 multiplied deal, and way before his deal was up

2 received a huge jump in pay simply because Dana

3 just saw a lot of potential in him.

4 Q Okay. So I want to go back to the PCCX-391,

5 which is -- can we put 391 up, please. And

6 that's -- I'll just take minute, but it's the

7 e-mail exchange between Bas Boon about John --

8 A Olav Einemo.

9 Q Einemo.

10 Now, just to be clear, plaintiffs have asked

11 you a number of questions. But when you said, "I

12 have a pay structure, I cannot mess it up for one

13 fighter," did that mean to you that Zuffa had a pay

14 structure?

15 A No, Zuffa did not have a pay structure.

16 Q Why do you say that?

17 A Well, because my opinion of what somebody

18 was worth was not the same as what Dana thought

19 they were worth or Lorenzo thought they were worth

20 or Sean thought they were worth. There's no, like,

21 written or set structure or anything.

22 Me saying "structure," I'm just talking

23 about my logical framework of how I justified; that

24 if Dana came to me and said, why are you paying

25 this guy this, that I could then go, I'm paying him

Page 93

1 this because of this, this and this.

2 THE COURT: Well, you try to be

3 consistent, right, Mr. Silva?

4 THE WITNESS: Correct. I try to have a

5 consistent logic. Now, those numbers would

6 change depending on the circumstances.

7 THE COURT: Well, right. They would

8 change based upon each fighter, obviously.

9 But in terms of what you considered the early

10 stage, you looked at their performance and

11 their popularity as two of the main factors

12 you considered, you didn't change

13 consideration of those two main factors across

14 the fighters, right?

15 THE WITNESS: Right. But there are

16 also other things. Like I said, if somebody

17 had fought multiple late-notice fights. As

18 long as they had some sort of thing that I

19 could verbalize it --

20 THE COURT: Well, I understand that. I

21 understand that. What I'm saying is there

22 would be a case that -- some of the fighters

23 you would consider performance but not their

24 popularity, and for other fighters you would

25 just consider popularity. You wouldn't --

<p style="text-align: right;">Page 94</p> <p>1 THE WITNESS: Well, it would weigh 2 differently. And that was a hard thing, where 3 this is more of an art than a science. 4 THE COURT: Mr. Silva, you have to try 5 to listen to my question. 6 You considered performance and 7 popularity for all of the fighters when you 8 assessed them, right? 9 THE WITNESS: Yes. 10 THE COURT: Okay. And you try to do 11 that analysis the same for the fighter; it 12 doesn't mean that it resulted in the same 13 contract, I'm not saying that meant that you 14 paid them all the same. What I'm saying is 15 that you tried to use those factors equally 16 across the fighters; you didn't try to weigh 17 them differently just based upon who the 18 fighter was. 19 And I understand that the factor itself 20 might have come out differently in terms of 21 your analysis based on the fighter's 22 performance, but it's not as if, for example, 23 some fighters you would say, I'm not even 24 going to consider their performance at all, 25 for example. You would never do that, right?</p>	<p style="text-align: right;">Page 96</p> <p>1 A No. We differed greatly oftentimes. 2 Q And did you have any -- you mentioned you 3 didn't have any guidance. But did you have any 4 framework that told you, all four of you, how much 5 you should be offering a particular fighter based 6 on performance or popularity? 7 A No. 8 Q And you mentioned there were times that you 9 disagreed; is that correct? 10 A Correct. 11 Q Did you ever receive even like an e-mail 12 that said this is the structure that we're going to 13 use going forward to negotiate with athletes to 14 determine how much to offer that athlete? 15 A No. 16 Q And if there was such a policy, would you 17 have known about it in the course of your job as 18 vice president of talent and relations? 19 A I would think so, because I was signing so 20 many contracts, I would have to know. 21 Q And when you talked about using objective 22 factors, if you didn't agree, would those factors 23 be the same for everybody who was negotiating 24 contracts? 25 A No.</p>
<p style="text-align: right;">Page 95</p> <p>1 THE WITNESS: Correct. 2 THE COURT: Okay. That's what I'm 3 saying. I just want to get a sense of the 4 application of the fact that you tried to use 5 the same factors so you could be consistent, 6 and then you could justify, as you said, why 7 you paid, for example, different fighters 8 different amounts; is that right? 9 THE WITNESS: Correct. 10 THE COURT: Okay. All right. That's 11 helpful. Thank you. Go ahead, Ms. Grigsby. 12 BY MS. GRIGSBY: 13 Q Just to be clear, though, how many different 14 people negotiated contracts besides yourself with 15 athletes? 16 A There was me, Sean Shelby, Dana, Lorenzo. 17 Sometimes they might hand one off to one of the 18 lawyers, but generally they would, like, give them 19 the terms, they'd just kind of be in between. But 20 we were the four main people, me, Sean, Dana and 21 Lorenzo. 22 Q And when you talk about you, Sean, Dana, 23 Lorenzo, which is four people, did you always agree 24 on how much a fighter was worth or how much would 25 be offered to a fighter?</p>	<p style="text-align: right;">Page 97</p> <p>1 THE COURT: Well, Mr. Silva, my 2 understanding from your earlier testimony was 3 that you negotiated most of the contracts, and 4 the high-level contracts were left to 5 Mr. White and Mr. Fertitta, but most of the 6 contracts -- most of the lower fights, I take 7 it, were left to you as one of the main people 8 doing the negotiations; is that right? 9 THE WITNESS: No. I mean, Sean Shelby 10 did probably 40 percent. Between me and Sean, 11 the ones that Dana and Lorenzo did do, we 12 probably split 60/40. 13 THE COURT: I see. So they would 14 negotiate -- Mr. White and Fertitta, they 15 would negotiate some of the top fighters; is 16 that correct? 17 THE WITNESS: Right. 18 THE COURT: In terms of the fighters 19 below that, it was then you and Mr. Shelby, 20 and you said as related to that split between 21 you and Mr. Shelby, it was about you doing 22 60 percent, Mr. Shelby about 40 percent? 23 THE WITNESS: That seems about right. 24 THE COURT: Okay. 25</p>

<p style="text-align: right;">Page 98</p> <p>1 BY MS. GRIGSBY:</p> <p>2 Q And did you --</p> <p>3 THE COURT: And hold on just a second,</p> <p>4 Ms. Grigsby.</p> <p>5 MS. GRIGSBY: Okay.</p> <p>6 THE COURT: So did you and Mr. Shelby</p> <p>7 have vastly different ways of evaluating</p> <p>8 fighters, so if one fighter came to you with</p> <p>9 essentially the same types of popularity and</p> <p>10 performance, they'd get one number, and they'd</p> <p>11 get a different number from Mr. Shelby?</p> <p>12 THE WITNESS: It didn't happen. It</p> <p>13 would go because of -- I didn't want to create</p> <p>14 confusion, I'd seen how they work in other</p> <p>15 promotions, so we tried to not do what I call</p> <p>16 crossing the streams.</p> <p>17 THE COURT: Right. But --</p> <p>18 THE WITNESS: I left Sean's guys to</p> <p>19 Sean. But if he gave them a deal, like, they</p> <p>20 didn't like, they would try to come to me, and</p> <p>21 I'd be like, no, that's not -- you're Sean's</p> <p>22 guy, not my guy, I'm not dealing with that.</p> <p>23 THE COURT: Well, and was Mr. Shelby,</p> <p>24 as far as you know, considering other factors</p> <p>25 besides performance and popularity?</p>	<p style="text-align: right;">Page 100</p> <p>1 ones that he used, yes.</p> <p>2 THE COURT: Because I want to</p> <p>3 understand. It's not as if, for example, if</p> <p>4 I'm saying this -- otherwise you'd have, it</p> <p>5 seems to me, some sort of competition that</p> <p>6 you -- one fighter could come to you and get a</p> <p>7 10, 10, or a 15, 15 contract, and go to him</p> <p>8 and get a 22 and 22 or whatever the number</p> <p>9 would be contract?</p> <p>10 THE WITNESS: He could not.</p> <p>11 THE COURT: Okay. So there would be</p> <p>12 some sense of at least consistency as it</p> <p>13 relates to the application? It's not as if</p> <p>14 you had vastly different ways in which the</p> <p>15 same type of fighter would be given a</p> <p>16 contract, is it?</p> <p>17 THE WITNESS: They could not, because</p> <p>18 we didn't deal with the same fighters.</p> <p>19 THE COURT: Okay. So help me</p> <p>20 understand. So in other words, you're saying</p> <p>21 that once a fighter had a contract negotiated</p> <p>22 with you, then typically you would be the one</p> <p>23 to renegotiate that fighter's contract?</p> <p>24 THE WITNESS: Yes. Sean had his weight</p> <p>25 classes. He did 145, 135, 125 pound men's and</p>
<p style="text-align: right;">Page 99</p> <p>1 THE WITNESS: No. But our opinion of</p> <p>2 what those are, what he might find to be</p> <p>3 exciting or interesting or not, but I did,</p> <p>4 that would happen all the time. When we had</p> <p>5 to determine the of-the-night bonuses, we'd</p> <p>6 fight like cats and dogs about that.</p> <p>7 THE COURT: I understand that. But</p> <p>8 it's your understanding that Mr. Shelby was</p> <p>9 also looking at performance and popularity</p> <p>10 when he determined what to pay fighters,</p> <p>11 wasn't he?</p> <p>12 THE WITNESS: There's also, like,</p> <p>13 potential. That's a big part of what you</p> <p>14 would pay --</p> <p>15 THE COURT: Mr. Silva, again, try to</p> <p>16 listen to my question.</p> <p>17 Did you understand that Mr. Shelby was</p> <p>18 also using popularity and performance as</p> <p>19 measures to determine what to pay fighters?</p> <p>20 THE WITNESS: Yes, I understood the</p> <p>21 question, and I'm trying to explain --</p> <p>22 THE COURT: It's a yes-or-no question.</p> <p>23 So did he also use those factors or did</p> <p>24 he not?</p> <p>25 THE WITNESS: Those are part of the</p>	<p style="text-align: right;">Page 101</p> <p>1 the women's divisions. I did not touch those</p> <p>2 classes, never ever.</p> <p>3 THE COURT: Right. Okay. So you had</p> <p>4 your own sort of categories that you looked</p> <p>5 at?</p> <p>6 THE WITNESS: Yes.</p> <p>7 THE COURT: Okay. Now I get it. Okay.</p> <p>8 Thank you.</p> <p>9 Go ahead, Ms. Grigsby.</p> <p>10 BY MS. GRIGSBY:</p> <p>11 Q And you were mentioning something about</p> <p>12 potential. Would you say potential is the same</p> <p>13 thing as performance and popularity?</p> <p>14 A No, because it's unknown. You know how</p> <p>15 popular someone is. You know what they've done.</p> <p>16 It's a whole different thing, you trying to guess</p> <p>17 what they might do in the future. That's a whole</p> <p>18 different thing. And that's where our opinions can</p> <p>19 vary greatly.</p> <p>20 Q Did your opinion vary from Sean, Lorenzo</p> <p>21 Fertitta and Dana White about who had potential in</p> <p>22 terms of athletes?</p> <p>23 A Yes.</p> <p>24 Q So I want to look at Plaintiffs'</p> <p>25 Exhibit 365, if we could put that up.</p>

<p style="text-align: right;">Page 102</p> <p>1 And this is the e-mail from February 12th, 2 2011, and the subject is "We own MMA." Correct? 3 So I just have a few questions, which is -- 4 so here it's talking about the rankings. It's for 5 USA Today, SB Nation Consensus MMA Rankings. 6 What type of ranking is that in terms of MMA 7 athletes? 8 A What they would do is they would check a 9 bunch of other websites' rankings and then try to 10 come up with -- get an average using all these 11 other rankings that were done. 12 Q When you were looking at rankings -- or when 13 you looked at rankings, did you always refer to the 14 SB Nation Consensus MMA Rankings to determine an 15 athlete's ranking? 16 A Not always. 17 Q Where else would you look? 18 A There was a bunch of different -- you know, 19 Sherdog would do rankings, or FightMetric. There 20 was a bunch of different rankings. So you kind of 21 checked them all out to see what they're doing, if 22 you agreed with them, disagreed with them. 23 Q And did rankings stay consistent, like, you 24 know, from, say, one month to the next? 25 A No.</p>	<p style="text-align: right;">Page 104</p> <p>1 about wage share. Are you familiar with the 2 concept of paying athletes a percentage of a 3 company's revenue? 4 MR. CRAMER: Your Honor, may I object? 5 There's -- first of all, Mr. Silva never put 6 in a declaration in this case. So the only 7 thing we have in the record from Mr. Silva are 8 his documents and the deposition. There are 9 no questions in the deposition about wage 10 share. There's nothing in the documents about 11 wage share. So now we're going to have this 12 lay witness testify apparently about an 13 economic concept that seems inappropriate and 14 brand new and -- 15 THE COURT: Okay. Ms. Grigsby, did he 16 ever previously testify about wage share? 17 MS. GRIGSBY: He did not, but that's 18 the point. He is going to testify -- 19 THE COURT: So we're not going to allow 20 him to testify about it now. 21 MS. GRIGSBY: So I just -- really, my 22 only question there is if he's even familiar 23 with it. 24 THE COURT: Here's what I'm saying. I 25 really don't think it's fair to go down this</p>
<p style="text-align: right;">Page 103</p> <p>1 Q How often would they change? 2 A They would change constantly. Even the UFC 3 rankings changed depending on who in the pool was 4 voting. 5 Q So the number of people who are ranked here, 6 would those necessarily have the same rankings in, 7 say, 6 or 12 months? 8 A No. 9 Q Just one other thing I wanted to point out. 10 So you were looking at the heavyweight rankings, 11 and it ranks them 1 through 23. And you mentioned 12 a couple of times, but who was the top Strikeforce 13 heavyweight on this consensus ranking? 14 A Fedor Emelianenko was in Strikeforce. 15 Q And did Fedor Emelianenko ever sign with the 16 UFC? 17 A He did not. 18 Q Did you try to sign Fedor? 19 A We did. 20 Q And you were never successful -- how long 21 did you try to sign Fedor? 22 A For quite a while. He was considered by 23 many to be the top heavyweight for a long time, so 24 we definitely tried to get him. 25 Q So I want to talk to you just a little bit</p>	<p style="text-align: right;">Page 105</p> <p>1 avenue if there hasn't been testimony. 2 MS. GRIGSBY: Sure. 3 THE COURT: Because what's going to 4 happen is we're going to end up -- there's 5 essentially a free-for-all for testimony as it 6 relates to things that he hasn't previously 7 testified about. 8 So I'm going to sustain the objection. 9 We'll move on. 10 BY MS. GRIGSBY: 11 Q So when you were negotiating contracts with 12 athletes, did you know Zuffa's event revenues? 13 A I did not. 14 Q Were you ever told that you had a budget for 15 negotiating with fighters? 16 A I was not. 17 Q Were you ever told that you were spending 18 too much for compensation on fighters? 19 A I was not. 20 Q Now, plaintiffs have suggested that Zuffa 21 tried to maintain a certain set of its revenues as 22 compensation -- 23 MR. CRAMER: Your Honor -- 24 THE COURT: You're asking the question 25 in a different way, and so I just want to warn</p>

<p style="text-align: right;">Page 106</p> <p>1 you. All right. I gave you a little latitude 2 on the first few questions. Please, if I 3 sustain an objection, don't try to ask the 4 question in a different way, because that's 5 exactly what we're doing. So I sustained it. 6 Move on from this area. 7 MS. GRIGSBY: Okay. I'll move on. 8 THE COURT: And I'm going to strike 9 from the record all of his answers as it 10 relates to revenues in this case that were 11 just asked and answered. Go ahead. 12 BY MS. GRIGSBY: 13 Q Well, just one question is: Did any athlete 14 ever ask to be paid based on revenue from an event? 15 THE COURT: Sustained. 16 BY MS. GRIGSBY: 17 Q Now, plaintiffs have asked you a little bit 18 about the right to match, Zuffa's right to match 19 athletes who brought offers. You recall that 20 testimony, correct? 21 A Correct. 22 Q And there you said that many of the 23 athletes, there was only a certain percent where 24 Zuffa chose not to match it; is that right? 25 A Correct.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q And did Zuffa try to retain Brandon Vera? 2 A We made an offer to keep him. He was an 3 attractive athlete, he could fight heavyweight or 4 light heavyweight. 5 Q And so another thing that plaintiffs -- or 6 Mr. Cramer asked you about was the fact that you 7 often renegotiated contracts on the third fight. 8 So why did you renegotiate contracts on the 9 third or -- the third or the fourth -- third fight 10 of a four-fight deal? 11 A Well, I would prefer that the fighters would 12 stay in their contract so that I could immediately 13 turn them around into other shows. 14 The longer that you had negotiations outside 15 of contract, that was going to take longer before I 16 could put them in a show. I couldn't advertise a 17 fighter as being on a show if he was not actually 18 contracted to me. 19 Q And in terms of renegotiating after the 20 third fight, was it always you initiating that 21 negotiation? 22 A No. Quite often fighters would want to do a 23 new deal because they know that I would offer them 24 more money to do a new deal. 25 Q So can we pull up ZCCX-14? And I'm looking</p>
<p style="text-align: right;">Page 107</p> <p>1 Q Now, can you list some of the athletes that 2 Zuffa did want to retain that you were unable to 3 retain and match? 4 A I mean, just off the top of my head, guys 5 like Ryan Bader, Rory MacDonald -- 6 MR. CRAMER: Your Honor, I'm going to 7 object here too. This is brand new. I've 8 actually asked him in his deposition, and he 9 said -- 10 THE COURT: Overruled. I asked him 11 about this, and he gave percentages. 12 MR. CRAMER: Okay. 13 THE COURT: He can go ahead and do 14 that. Go ahead. 15 THE WITNESS: So we had fighters like 16 Rory MacDonald, Ryan Bader, Lyoto Machida, 17 Gegard Mousasi. There's a lot of fighters who 18 we made offers to keep, and they got better 19 offers and outbid us. 20 THE COURT: Okay. 21 BY MS. GRIGSBY: 22 Q And some of these fighters, where did they 23 end up competing? 24 A Those went to Bellator. But guys -- like, 25 Brandon Vera went to One FC.</p>	<p style="text-align: right;">Page 109</p> <p>1 at page 2 of 9. 2 So here, I'll just read it. It's to you 3 from -- 4 THE COURT: Okay. Why don't you just 5 ask it, just like I told Mr. Cramer. 6 MS. GRIGSBY: Sure. 7 BY MS. GRIGSBY: 8 Q Well, here it's about Tim Means. And it 9 says at the bottom: "I'd like to talk to you about 10 a new contract for Tim Means. He's three in on his 11 current four-fight deal. Hit me back at your 12 convenience." 13 Is this an example of some -- a manager 14 trying to renegotiate before the fourth fight? 15 A Yes. 16 Q Okay. So can you look at the next page of 17 the exhibit. This is for a different fighter, and 18 I don't want to do violence to his name, but Daniel 19 Omielanczuk. 20 A Omielanczuk. 21 Q Yeah. 22 At the bottom it says -- it's from his 23 manager. And it says: "How are you doing? Daniel 24 did a job in UFC Fight Night 72. We are happy to 25 see his aggressive style and finish his night in 48</p>

Page 118

1 Q Fair enough.
 2 And you, with the fighters that you were
 3 negotiating with, attempted to be fair and slot the
 4 fighters in in terms of your view of their
 5 popularity and performance, right?
 6 A Correct.
 7 Q And Mr. Shelby tried to do the same, right?
 8 A Correct.
 9 Q And Mr. White tried to do the same with the
 10 people he was negotiating with, right?
 11 A Correct.
 12 Q And Mr. Fertitta, to the extent he was
 13 involved at all, he also tried to be fair, correct?
 14 A Correct.
 15 Q All right. Let's talk about --
 16 THE COURT: Excuse me just for a
 17 second.
 18 So, Mr. Silva, are you saying there was
 19 no communication with each other about what
 20 would be appropriate levels of compensation to
 21 offer? So you would never get e-mails from
 22 Mr. Shelby or Mr. White or Mr. Fertitta
 23 saying, I'm thinking of offering this fighter
 24 this amount, what do you think?
 25 Did that ever happen?

Page 119

1 THE WITNESS: Not that I recall.
 2 Especially with Dana and Lorenzo, there was
 3 contracts that I did not know about until I
 4 saw after I stopped working for UFC.
 5 THE COURT: Okay. So other than those
 6 two -- they're doing about 10 percent of the
 7 deals.
 8 Other than the deals they're doing,
 9 with you and Mr. Shelby, you're saying you
 10 never communicated about compensation levels.
 11 So in other words, you never said or he never
 12 said to you, I'm thinking of offering this
 13 fighter this amount, do you think that's fair
 14 or appropriate, what would you do? That never
 15 happened?
 16 THE WITNESS: I don't think so, because
 17 it was a little bit of apples and oranges. We
 18 did very different weight classes, so to judge
 19 a brand new women's weight class versus my
 20 much more established -- I had the oldest,
 21 largest weight classes. His weight classes
 22 were such a different thing, he wanted a
 23 different talent pool.
 24 You know, my job is that -- I kind of
 25 showed I knew what I was doing. So he and

Page 120

1 Lorenzo would mostly leave me alone. And then
 2 when Sean came in and was doing his weight
 3 classes, I wanted to do the same thing for
 4 him. Like, I think you're a smart guy, you
 5 know what you're doing, go do your thing.
 6 THE COURT: So essentially what you're
 7 saying is you both keep -- stay in your lane
 8 as it relates to your weight classes and what
 9 was being offered, because that was your
 10 expertise, and you didn't really spend a lot
 11 of time looking at fighters in his weight
 12 class, and he didn't spend a lot of time
 13 looking at fighters in your weight class as
 14 far as you know?
 15 THE WITNESS: Correct.
 16 THE COURT: Okay. Thank you. That
 17 helps.
 18 BY MR. CRAMER:
 19 Q And Mr. Shelby was experienced with his
 20 weight classes, and attempted to be consistent in
 21 his classes, right?
 22 A Sure.
 23 Q And you were experienced in your weight
 24 classes, and attempted to be consistent in your
 25 weight classes, correct?

Page 121

1 A Correct.
 2 Q Okay. Let's talk about some of the
 3 different forms of payment that Ms. Grigsby asked
 4 you about. She asked you about the
 5 fight-of-the-night bonus. There were some other
 6 kinds of bonuses, like the knockout-of-the-night
 7 bonus, right?
 8 A Right.
 9 Q There was also a Pay-Per-View payment,
 10 correct?
 11 A Correct.
 12 Q Now, is it fair to say that -- and you said
 13 that one of the issues with the show and the win
 14 payment was the fact those were set in advance of
 15 the fight?
 16 A (Nods head up and down.)
 17 Q These -- the fight of the night, knockout of
 18 the night, Pay-Per-View, those happened after the
 19 fight, correct?
 20 A Correct.
 21 Q And the goal of those types of payment are
 22 really to try to align the actual fact of the
 23 performance and popularity with the compensation,
 24 right?
 25 A Well, the popularity had nothing to do about

<p style="text-align: right;">Page 122</p> <p>1 it.</p> <p>2 Q Well, the Pay-Per-View?</p> <p>3 A No.</p> <p>4 Q Well, the fighter draws a lot of</p> <p>5 Pay-Per-View --</p> <p>6 A Oh, you're talking about the Pay-Per-View</p> <p>7 bonus?</p> <p>8 Q Yeah.</p> <p>9 A I thought you were saying of-the-night</p> <p>10 bonuses, sorry.</p> <p>11 Q Let's talk about the fight of the night and</p> <p>12 the knockout of the night.</p> <p>13 A Okay.</p> <p>14 Q Those are attempting to align the actual</p> <p>15 fact of the performance with the pay?</p> <p>16 A Correct.</p> <p>17 Q And the Pay-Per-View is, in part, attempting</p> <p>18 to align the actual fact of the popularity with the</p> <p>19 pay, correct?</p> <p>20 A Correct.</p> <p>21 Q Okay. Do you know the direction in terms of</p> <p>22 the average fight-of-the-night bonus per fighter</p> <p>23 from, like, 2007 forward, whether that went down</p> <p>24 substantially?</p> <p>25 A For the of-the-night bonuses?</p>	<p style="text-align: right;">Page 124</p> <p>1 shown to you at your deposition, it was</p> <p>2 Exhibit 50 at your deposition. I'm just</p> <p>3 showing you because it actually -- put up the</p> <p>4 first page of the document.</p> <p>5 MS. GRIGSBY: So I'm going to object</p> <p>6 too because there is no foundation, just like</p> <p>7 that Joe Silva has testified about --</p> <p>8 THE COURT: Okay. I agree with you,</p> <p>9 Ms. Grigsby. Sustained.</p> <p>10 So, Mr. Cramer, if you want to</p> <p>11 establish a little bit of foundation as to</p> <p>12 whether or not this witness knows this</p> <p>13 document.</p> <p>14 MR. CRAMER: Okay. This is PCCX-88.</p> <p>15 And please take that down. Please take that</p> <p>16 down.</p> <p>17 Mr. Silva just testified about the</p> <p>18 amount -- the dollar amount of</p> <p>19 fight-of-the-night bonuses, and this document</p> <p>20 contains actual figures on --</p> <p>21 THE WITNESS: No, it doesn't.</p> <p>22 THE COURT: Well, the question is --</p> <p>23 MR. CRAMER: Okay.</p> <p>24 THE COURT: Hold on, Mr. Silva.</p> <p>25 It's not whether or not he was</p>
<p style="text-align: right;">Page 123</p> <p>1 Q Yes.</p> <p>2 A No. There was a time, as I said, I'm not</p> <p>3 sure exactly when it started, but that the</p> <p>4 of-the-night bonuses were different depending on</p> <p>5 the show. And then there was a time where they did</p> <p>6 away with that because fighters would want to avoid</p> <p>7 the smaller shows, they could fight for a bigger</p> <p>8 bonus, so then they made it standard for every show</p> <p>9 that it would be \$50,000.</p> <p>10 Q All right. I'd like to show you a document</p> <p>11 from 2015 that actually covers this issue. It's</p> <p>12 formatted similar to the minimum fight --</p> <p>13 A Uh-huh.</p> <p>14 Q -- payment document.</p> <p>15 So please put the first page of the document</p> <p>16 up.</p> <p>17 MR. CRAMER: And, Mr. Madden, can you</p> <p>18 identify the document?</p> <p>19 MR. MADDEN: He's working on it. I can</p> <p>20 give you the Bates number.</p> <p>21 MR. CRAMER: What's it called? Do you</p> <p>22 have it?</p> <p>23 MR. MADDEN: It's on your screen.</p> <p>24 MR. CRAMER: Oh, it's on my screen.</p> <p>25 Fighter Bonus Payment, February 2015. It was</p>	<p style="text-align: right;">Page 125</p> <p>1 involved. The question is whether or not he</p> <p>2 is aware of this particular document --</p> <p>3 MR. CRAMER: Okay.</p> <p>4 BY MR. CRAMER:</p> <p>5 Q Are you aware of this document?</p> <p>6 THE COURT: -- and what the figures</p> <p>7 are.</p> <p>8 MR. CRAMER: Fair enough, Your Honor.</p> <p>9 BY MR. CRAMER:</p> <p>10 Q Are you aware of this document? Have you</p> <p>11 seen it before?</p> <p>12 A I am aware of the document.</p> <p>13 Q Okay. You'd seen it during the course of</p> <p>14 your work at the UFC?</p> <p>15 A Right. Now, there was other bonuses, too,</p> <p>16 that were not discussed that were not fight of the</p> <p>17 night, and that's what I believe this chart</p> <p>18 references, that for a long period of time what</p> <p>19 would happen is after a show would end, the next</p> <p>20 day, for Monday, I would summarize the card to</p> <p>21 Dana, Lorenzo, Sean, and I'd say, here's what</p> <p>22 happened in every fight, and here's money that's</p> <p>23 not knockout of the night or fight of the night,</p> <p>24 here's extra bonuses that I think these guys are</p> <p>25 worth. And I would make suggestions, this guy</p>